



Takoma Park City Council Meeting – July 10, 2024 Agenda Item 4

Voting Session

Second Reading Ordinance Amending Takoma Park Code, Title 7, Purchasing and Taxation, Chapter 7.04 Source Selection and Contract Formation to Address Software and Information Technology Related Contracts

Recommended Council Action

Approve Ordinance

Context with Key Issues

The Takoma Park City Code, Title 7, establishes the City's procurement process. The current process requires all contract terms be limited to a maximum of three years with two single year renewals. The process is intended to, among other benefits, encourage the regular review and evaluation of contracts to ensure the efficient use of City funds. However, the process does not separately consider that software and IT related services are generally intended for long-term use, require significant monetary investment, and are often intricately imbedded into the City's operations.

Software and IT contracts streamline daily tasks and support essential functions such as budgeting, payroll, hiring, record keeping, and data management -- to name a few. They represent a significant investment in funding and time. For instance, the first-year costs for the City's new HRIS system are estimated at nearly \$87,000 with an implementation timeline of three to six months.

Due to the magnitude of software and IT investment, once implemented, such systems are expected to remain under contract for more than the existing procurement requirements allow. As a result of the term limitations, the City must regularly renegotiate, receive Council approval and execute contracts for systems it has no intention of replacing. The process creates operating and cost inefficiencies as they require staff time, legal review and can prevent optimal pricing.

Examples of software and IT systems include:

Program	Department	Function	Annual Expense
UKG - HRIS System	Human Resources	Time Keeping, Benefits Management, Employee Performance, Record Keeping	\$48,549
Google Workspace	IT	City Email	\$50,760
Tyler Technologies	Finance	Financial Management, Payroll, Budgeting	\$48,800
Microsoft	IT	Operating System, Servers	\$35,000
Granicus	Police, HCD, PW	Citizen Portal, Permitting, Code Enforcement, Non-Emergency Management	\$40,000

A modernization of the procurement provision of Title 7 of the City Code related to software and IT contracts is necessary to improve the efficiency of the City's procurement of goods and services. The proposed Code changes would allow software and IT contracts a maximum term not to exceed five years. Subsequent extensions of the contract must be approved by the City Council. There is no limitation on the number of extensions that Council may authorize.

The code revisions also include an addition that limits professional service contracts to five years.

Council Priority

Fiscally Sustainable Government
Engaged, Responsible, Service-Oriented Government

Environmental Impact of Action

There is no expected environmental impact.

Racial Equity Considerations

There is no expected racial equity impact.

Fiscal Impact of Action

The City may benefit financially from process efficiencies that are created by the modernized procurement procedures. Cost savings may be realized through reduced legal expenses, reduction in staff time and improved contract cost structure.

Attachments and Links

Draft Ordinance

1 Introduced by: Councilmember Fulcher

First Reading: July 1, 2024

2 Second Reading: _____

3 Effective Date: _____

4
5 **CITY OF TAKOMA PARK, MARYLAND**
6 **ORDINANCE 2024-18**

7
8 **AMENDING THE CITY OF TAKOMA PARK CODE, TITLE 7,**
9 **PURCHASING AND TAXATION, CHAPTER 7.04 GENERAL**
10 **PROVISIONS, CHAPTER 7.08 SOURCE SELECTION AND CONTRACT**
11 **FORMATION TO ADDRESS SOFTWARE AND INFORMATION**
12 **TECHNOLOGY RELATED CONTRACTS.**

13
14 **WHEREAS,** the Maryland Code, Local Government Article, Section 5–202, as amended,
15 authorizes the legislative body of each municipal corporation in the State of
16 Maryland to pass ordinances that such legislative body deems necessary to assure
17 the good government of the municipality, to protect and preserve the
18 municipality’s rights, property and privileges, to preserve peace and good order,
19 to secure persons and property from danger and destruction, and to protect the
20 health, comfort, and convenience of the citizens of the municipality;

21
22 **WHEREAS,** Section 401(a) of the City Charter states that the Council has the power to pass
23 all such ordinances not contrary to the Constitution and laws of the State of
24 Maryland as it may deem necessary for the good government of the City, for the
25 protection and preservation of the City’s property, rights, and privileges, for the
26 preservation of peace and good order, for securing persons and property from
27 violence, danger or destruction, and for the protection and promotion of the
28 health, safety, comfort, convenience, welfare, and happiness of the residents of
29 and visitors in the City;

30
31 **WHEREAS,** Section 826(a) of the City Charter empowers the City Council to establish, by
32 ordinance, rules and regulations regarding purchases and contracts for the City;
33 and

34
35 **WHEREAS,** the Council, has determined that modernization of the procurement provisions of
36 Title 7 of the Takoma Park Code related to Software and Information Technology
37 contracts is necessary to improve the efficiency of the City’s procurement of
38 goods and services, the City’s ability to make more timely purchases, and to
39 ensure the appropriate and orderly assessment and collection of taxes within the
40 City.

41
42 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
43 **TAKOMA PARK, MARYLAND, THAT** Title 7, Purchasing and Taxation of the Takoma Park
44 Code is hereby amended as follows:
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46

1
2 **Division 1. Purchasing**
3
4 **Chapter 7.04**
5 **GENERAL PROVISIONS**
6
7
8

9 **Sections:**

- 10 7.04.010 Purpose.
11 7.04.015 Sustainability and social equity considerations.
12 7.04.020 Scope.
13 7.04.030 Administration.
14 7.04.040 Definitions.
15 7.04.050 Expenditure of City funds.
16 7.04.060 Powers and duties of City Council and Manager.

17 **7.04.010 Purpose.**

18 The purposes of this division are:

- 19 A. To provide for fair and equitable treatment of all persons involved in public purchasing by
20 the City;
- 21 B. To provide for an efficient, cost-effective, environmentally sustainable, and equitable system
22 of public procurement and to ensure the maximum purchasing value of public funds in
23 procurement; and
- 24 C. To provide safeguards for maintaining a procurement and disposition system of quality and
25 integrity. (Ord. 2021-36, 2021/prior code § 9A-1)

26 **7.04.015 Sustainability and social equity considerations.**

27 A. The City will incorporate the following factors when writing specifications for procuring
28 materials, products or services:

- 29 1. Environmental factors to be considered include, but are not limited to, the life cycle
30 assessment of:
- 31 a. Pollutant releases;
- 32 b. Toxicity, especially the use of persistent, bioaccumulative, and toxic (PBT) chemicals;
- 33 c. Waste generation;
- 34 d. Greenhouse gas emissions;
- 35 e. Energy and water consumption;
- 36 f. Depletion of natural resources; and
- 37 g. Impacts on biodiversity.

- 1 2. Social equity factors to be considered include, but are not limited to:
 - 2 a. Human health impacts;
 - 3 b. Use of local businesses; and
 - 4 c. Use of State of Maryland minority, women, and emerging small businesses.
- 5 B. While not all factors will be incorporated into every purchase, it is the intent of this policy
6 that the City will make a good faith effort to incorporate and balance these factors to the maximum
7 extent possible and as permitted by law.
- 8 C. To advance equity goals in City purchasing, City staff will put in place the following practices
9 and report back to Council annually its advances in these areas:
 - 10 1. Affirmatively market all procurements to M/WBE firms;
 - 11 2. Attend outreach events for existing and potential M/WBE firms and pursue aggressive
12 outreach strategies to sustain and improve M/WBE participation in City contracts;
 - 13 3. Improve and expand technical assistance, business development, training and mentoring
14 programs for M/WBE firms by greater coordination with organizations, businesses and
15 individuals and public agencies as well as other City departments and offices;
 - 16 4. Identify and implement a citywide method to track the number of City contracts with
17 M/WBE; and
 - 18 5. Report to the Council annually on the City’s efforts to advance equity in purchasing. (Ord.
19 2021-36, 2021)

20 **7.04.020 Scope.**

21 This division applies to every disposition for value or expenditure of public funds by the City for
22 public purchasing irrespective of its source. When the procurement or disposition involves Federal,
23 State or County assistance or contract funds or is subject to Federal, State or County laws or
24 regulations, the procurement or disposition shall be conducted in accordance with any applicable
25 mandatory Federal, State, or County laws and regulations which are not reflected in this division.
26 Nothing in this division shall be construed as prohibiting or limiting the City’s right to employ its
27 own personnel for the construction or reconstruction of public improvements or any other purpose
28 without advertising for or receiving bids or proposals. (Ord. 2021-36, 2021/prior code § 9A-2)

29 **7.04.030 Administration.**

30 The City Manager and the Manager’s designee shall have the authority to adopt and enforce rules
31 and regulations in accordance with the procedures set forth in Title 2, to promote the efficiency of
32 operations and compliance with the provisions of this division. (Ord. 2021-36, 2021/prior code
33 §9A-3)

34 **7.04.040 Definitions.**

35 The following terms shall have the following meanings when used in this division:

1 “Bid” means an offer, in writing, to furnish goods or services in conformity with the specifications,
2 delivery terms and conditions or other requirements included in the invitation for bids or an offer
3 to purchase property pursuant to Chapter 7.08, Article 6.

4 “Competitive sealed bid” means a method of procurement in which a good, service or construction
5 item is defined in a list of specifications; the specifications are included in an invitation for bids;
6 the bids are received by a specified time in sealed envelopes; and an award is made to the
7 responsive and responsible bidder providing the lowest bid.

8 “Competitive sealed proposal” means a method of procurement in which a good, service or
9 construction item is defined in a list of specifications; the specifications are included in a request
10 for proposals; proposals are received by a specified time in sealed envelopes; and an award is made
11 to the proposer most closely meeting specifications as determined by an evaluation that uses a set
12 of evaluation criteria. Cost is one criterion, among others, all of which may be assigned specific
13 weights.

14 “Contract” means all types of City agreements, including purchase orders, regardless of what they
15 may be called, for the procurement or disposal of goods, services or construction.

16 “Contractor” means any person or business having a contract with the City.

17 “Cooperative purchasing” means procurement conducted by or on behalf of more than one
18 governmental unit.

19 “Department head” means one of the following: the City Clerk, the Chief of Police, the Director
20 of Public Works, the Library Director, the Director of Recreation, the Director of Housing and
21 Community Development or such other employees as the City Manager may designate from time
22 to time.

23 “Emergency” means any condition or unforeseen curtailment, diminution or termination of an
24 essential service which poses an immediate danger or threat to the public health, safety or welfare.

25 “Environmentally preferable products” means products that have a lesser or reduced adverse effect
26 on human health and the environment when compared with competing products that serve the
27 same purpose. This comparison may consider raw materials acquisition, production,
28 manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

29 “Formal contract” means a written contract for procurements exceeding \$30,000.00 in value that
30 must be signed by the City Manager.

31 “Goods” means supplies, materials, equipment and all tangible property, except real property.

32 “Indefinite quantities contract” means a contract whereby the City agrees to purchase and the
33 contractor agrees to provide the goods or construction of a designated type or unit which the City
34 may require, without specifying in the contract the exact quantity.

35 “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized
36 for soliciting bids.

1 “Life cycle costs” means specific and quantifiable costs associated with an item over its useful
2 life, including costs of disposal, in addition to the purchase price.

3 “Local business” is an independently owned and operated individual, business, or organization
4 located within 150 miles of the City that provides locally supplied products and goods.

5 “Locally supplied” means products and goods made or supplied, or services provided, from an
6 independently owned and operated individual, business, or organization located within 150 miles
7 of the City.

8 “Minority/woman-owned business enterprise” or “M/WBE” is a business that has received this
9 designation by another local government, the State of Maryland, or the United States of America.
10 Typically, an M/WBE is a business that is at least 51% owned and controlled by one or more
11 socially and economically disadvantaged individuals. An individual is presumed to be socially and
12 economically disadvantaged if that individual belongs to one of the following groups: African
13 Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, Native
14 Americans, and women. Persons who own and control their business, but are not members of one
15 of the above groups, also may meet the M/WBE definition if they establish their social and
16 economic disadvantage. Individuals with disabilities may also meet the M/WBE definition.

17 “Percentage price preference” means the percentage by which a bid from a responsible bidder or
18 price available from a vendor whose product contains recycled materials (or a greater use of
19 recycled material) may exceed the lowest responsive bid submitted by a responsible bidder whose
20 product does not contain recycled material (or a lesser use of recycled material).

21 “Post-consumer waste” means an item that has served its intended use, such as old newspapers or
22 magazines, and has been separated and diverted from the waste stream for the purposes of
23 collection and recycling. It does not include waste generated during production of an end product,
24 such as printer’s waste.

25 “Price preference” means a percentage of increase in price that the City may pay to obtain a
26 designated recycled or environmentally preferable product or service.

27 “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods,
28 services or construction. It also includes all functions that pertain to the obtaining of any good,
29 service or construction, including description of requirements, selection and solicitation of sources,
30 preparation and award of a contract and all phases of contract administration.

31 “Professional services” means personal services of members of a licensed or otherwise recognized
32 profession, including but not limited to accountants, architects, attorneys, auditors, engineers,
33 medical practitioners, surveyors, information technology support providers, and the like.

34 “Proposal” means an offer to supply goods or perform services or to purchase goods to be disposed
35 of in response to a request for proposals by the City where competitive sealed proposals or
36 negotiations will be used rather than the competitive sealed bid process.

37 “Recycled material” means material recovered from or otherwise diverted from the waste stream,
38 including recycled paper. It includes post-consumer waste but does not include those materials and
39 by-products generated from and commonly reused during production of an end product.

1 “Recycled paper” means paper or a paper product that contains recycled materials with a total
2 gross content of post-consumer waste of at least 80%, or if such a paper product is unavailable or
3 otherwise impracticable to procure that the paper or paper product has been de-inked or contains
4 a level of post-consumer waste that exceeds the then-current minimum content standards of the
5 United States Environmental Protection Agency for paper and paper products containing recovered
6 materials (40 C.F.R. Chapter 250), or if a paper or paper product meeting the requirements set out
7 herein is unavailable or otherwise impracticable to procure, that the paper or paper product
8 conforms to the then-current minimum content standards adopted by the United States
9 Environmental Protection Agency for paper and paper products containing recovered materials
10 (40 C.F.R. Chapter 250).

11 “Request for proposals” means all documents, whether attached or incorporated by reference, used
12 for soliciting proposals.

13 “Responsible bidder or offeror” means a person or entity who has the capability in all respects to
14 perform fully the contract requirements and the experience, integrity, reliability, capacity,
15 facilities, equipment and credit which will assure good faith performance. Any person who is in
16 default on the payment of taxes, licenses or other moneys due the City shall not be deemed
17 “responsible.”

18 “Responsive bidder” means a person or entity who has submitted a bid which conforms in all
19 material aspects to the invitation for bids.

20 “Rider contract” means an agreement procuring goods or services in which a vendor provides the
21 same goods or services to the City at the same price and under the same material terms and
22 conditions of the underlying contract, excluding quantities, between the vendor or contractor and
23 another governmental entity, and may include contracts awarded through City participation in
24 programs established by cooperative purchasing organizations or purchasing associations.

25 “Software contract” means a contract entered into for the provision of data, programs, and/or
26 operating systems used to operate computers and execute specific tasks.

27 “Specifications” means any description of the design or functional characteristics or of the nature
28 of a good, service or construction item. It may include a description of any requirement for
29 inspecting, testing or preparing a good, service or construction item. (Ord. 2021-36, 2021/Ord.
30 2014-41 § 2 (part), 2014/prior code § 9A-4)

31 **7.04.050 Expenditure of City funds.**

32 No City funds shall be expended unless:

33 A. The expenditure is authorized in the budget ordinance for the current year, previously
34 approved by ordinance or an ordinance revising it;

35 B. The expenditure is made pursuant to a contract or purchase order signed in accordance with
36 this division;

37 C. The contract or purchase order pursuant to which the expenditure is made has been approved
38 by the City Council or by the City Manager as required by this division. (Ord. 2021-36, 2021/prior
39 code § 9A-5)

1 **7.04.060 Powers and duties of City Council and Manager.**

2 A. The City Council shall, by ordinance duly enacted, approve all expenditures exceeding
3 \$50,000.00 or more; provided, however, that ordinances approving such expenditures may be
4 enacted upon a single reading without being read at two meetings of the City Council prior to
5 adoption, if each such expenditure is specifically authorized in the budget ordinance for the current
6 year or an ordinance revising it and the cost of the procurement is equal to or less than the budgeted
7 amount.

8 If the project, goods or services were authorized in the budget ordinance but exceed the budgeted
9 amount, an ordinance approving such expenditure may be enacted upon a single reading without
10 being read at two meetings of the City Council prior to adoption; provided, however, that the City
11 Manager makes a determination, in writing, that funds are available to cover the cost of the
12 procurement.

13 B. Nothing in subsection (A) of this section shall prohibit the City Council from approving the
14 purchase of items not included in the City budget, upon receipt of a written justification and a
15 written determination by the City Manager that funds are available for the purchase. City Council
16 approval shall be accomplished by two readings of an ordinance.

17 C. The City Manager shall:

18 1. Approve all City expenditures for goods or services which are not required to be approved
19 by the City Council, whether made pursuant to contract or purchase order;

20 2. Be responsible for the administration of a centralized system of purchasing and
21 procurement of goods and services for the City and for effectuating the provisions of this
22 division;

23 3. Establish such rules and regulations as he or she may deem necessary in order to carry out
24 the provisions of this division.

25 D. The City Manager may delegate in writing their powers and duties under this division to a
26 designated City employee. Any such designee may only approve expenditures that are equal to or
27 less than \$30,000.00.

28 E. The City Manager shall have the authority to enter into contracts on behalf of the City for the
29 purchase of goods and services once such purchases have been duly authorized in accordance with
30 this division and cooperative purchasing agreements as authorized in this division. (Ord. 2021-36,
31 2021/prior code § 9A-6)

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Chapter 7.08

SOURCE SELECTION AND CONTRACT FORMATION

Sections:

Article 1. General Provisions

- 7.08.010 Written contracts.
- 7.08.015 Contract modifications—Change orders—Price adjustments.
- 7.08.020 Voidable contracts.
- 7.08.025 Multi-term contracts.
- 7.08.026 Indefinite quantities contracts.
- 7.08.030 Validity of claims.
- 7.08.035 Records of procurement actions.

Article 2. Competitive Bidding and Source Selection

- 7.08.040 Conditions for use.
- 7.08.050 Competitive sealed bidding.
- 7.08.060 Competitive sealed proposals.

Article 3. Other Procurement Methods

- 7.08.070 Procurements exempt from competitive bidding.
- 7.08.080 Procedure for procurements exempt from competitive bidding.
- 7.08.090 Extensions.
- 7.08.100 Compliance with Chapter 14.04.
- 7.08.110 Purchase orders.
- 7.08.120 Petty cash expenditures.
- 7.08.130 Purchase of recycled products.
- 7.08.140 Environmentally preferable purchasing.

Article 4. Living Wage Requirement

- 7.08.150 Scope.
- 7.08.160 Exemptions.
- 7.08.170 Solicitation requirements.
- 7.08.180 Living wage requirement.
- 7.08.190 Notices.
- 7.08.200 Enforcement.
- 7.08.210 Review of living wage requirement.

1 Article 5. Bonds and Bid Security

2 7.08.220 Bid security.

3 7.08.230 Contract performance and payment bonds.

4 7.08.240 Additional bonds.

5 Article 6. Disposition of Goods

6 7.08.250 Generally.

7 7.08.260 Methods of sale.

8 7.08.270 Worthless items.

9 **Article 1. General Provisions**

10 **7.08.010 Written contracts.**

11 A. All contracts involving more than \$50,000.00 shall be awarded by the Council.

12 B. All contracts equal to or less than \$50,000.00 shall be awarded by the City Manager or their
13 designee, subject to the provisions of Section 7.04.060(D).

14 C. The City Manager may delegate, in writing, the authority to award contracts equal to or less
15 than \$30,000.00.

16 D. All procurements exceeding \$30,000.00 in value require a formal contract.

17 E. All procurements not exceeding \$30,000.00 in value must be supported by written
18 documentation. (Ord. 2021-36, 2021/prior code § 9A-7)

19 **7.08.015 Contract modifications—Change orders—Price adjustments.**

20 A. The following contract changes (including contract modifications, change orders, and price
21 adjustments) must be approved by ordinance which may be enacted upon a single reading pursuant
22 to Section 7.04.060(A):

23 1. Changes to any contract not originally awarded by the Council when the cumulative value
24 of the original contract and all changes to the contract exceed \$50,000.00;

25 2. Changes to any contract originally awarded, or any contract previously modified by the
26 Council, when the cumulative value of all changes exceeds both:

27 a. \$50,000.00; and

28 b. 10% of the original contract.

29 B. Except as otherwise provided by applicable law, the City Manager shall approve all other
30 contract changes in writing. (Ord. 2021-36, 2021)

31 **7.08.020 Voidable contracts.**

32 If any official of the City purchases or contracts for any goods, services or capital improvements
33 in a manner contrary to the provisions of this chapter, such purchase or contract shall be voidable
34 by the City. However, when, in the opinion of the City Manager, the contracting violation occurred
35 through no fault of the contractor, the contractor may be reimbursed on the basis of goods and

1 services furnished or work performed in good faith, in such amount as the City Manager may
2 determine. (Ord. 2021-36, 2021/prior code § 9A-8)

3 **7.08.025 Multi-term contracts.**

4 A. A contract for goods, insurance, or services, other than professional services, may be
5 entered into for any period of time deemed to be in the best interest of the City, not to exceed three
6 years; provided, that the term of the contract and conditions of renewal or extension, if any, are
7 included in the solicitation and funds are available for the first fiscal period at the time of
8 contracting. When funds are not appropriated or otherwise made available to support continuation
9 of performance in a subsequent fiscal period, the contract shall be canceled with no penalty to the
10 City. (Ord. 2021-36, 2021)

11 B. Professional services contracts may be entered into for any period of time deemed to be in
12 the best interest of the City, not to exceed five years.

13 C. Software contracts may be entered into for any period of time deemed to be in the best
14 interest of the City, not to exceed five years.

15 **7.08.026 Indefinite quantities contracts.**

16 The City may utilize indefinite quantities contracts, as defined in Section 7.04.040, to procure
17 goods or services to be furnished at specific times, or as ordered, at fixed unit prices. During the
18 term of a requirements contract, the City should use reasonable efforts to order all actual
19 requirements of the City, or one of its departments, during a specified period of time. Failure to
20 utilize a specific indefinite quantities contract for a particular procurement must not be considered
21 a breach of the contractual obligation unless the contract specifically provides that the contractor
22 is the exclusive source for the goods or services. Where practical, an indefinite quantities contract
23 should include a maximum amount of funds that may be expended pursuant to such contract within
24 a one-year period. If it is not practical to include in an indefinite quantities contract the maximum
25 amount of funds that may be expended within a one-year period, the City Manager shall explain
26 the reasoning in writing to the Council. (Ord. 2021-36, 2021)

27 **7.08.030 Validity of claims.**

28 No person or entity shall have a valid or enforceable claim against the City for the payment of any
29 moneys or any other thing of value pursuant to an alleged contract or agreement, unless the contract
30 or agreement has been signed and authorized as provided in this division. (Ord. 2021-36,
31 2021/prior code § 9A-9)

32 **7.08.035 Records of procurement actions.**

33 A. Contents of Record. All determinations and other written records pertaining to any solicitation,
34 award or performance of a contract shall be maintained for the City in a contract file. All records
35 shall be maintained for such time as required by State law or regulation but for not less than three
36 years.

37 B. Submission to the City Council. A copy of such record shall be submitted to the City Council
38 upon request. Such record shall be available for public inspection.

39 C. Reporting to the City Council. The City Manager shall immediately report to the City Council
40 any emergency purchase exceeding \$30,000.00. The City Manager shall provide a report to the
41 City Council at least twice every fiscal year concerning:

- 1 1. All emergency procurements exceeding \$10,000.00 in value; and
- 2 2. All procurements between \$30,000.00 and \$50,000.00 in value. (Ord. 2021-36, 2021/prior
- 3 code § 9A-16. Formerly 7.08.100)

4 **Article 2. Competitive Bidding and Source Selection**

5 **7.08.040 Conditions for use.**

6 A. General. All City contracts shall be awarded by competitive sealed bidding or competitive

7 sealed proposals, except as otherwise provided in Section 7.08.070.

8 B. City Vendors or Suppliers. The City Manager or designee shall take all reasonable steps to

9 assure that all qualified vendors or suppliers of goods or services residing or having their principal

10 offices in the City are made aware of the City's issuance of invitations for bids or requests for

11 proposals and given an opportunity to submit bids or proposals in response thereto. (Ord. 2021-

12 36, 2021/prior code § 9A-10)

13 **7.08.050 Competitive sealed bidding.**

14 A. Conditions for Use. Competitive sealed bidding shall be used when all of the following

15 circumstances apply:

- 16 1. Time permits the solicitation, submission and evaluation of sealed bids;
- 17 2. The award will be made on the basis of price and price-related factors;
- 18 3. It is not necessary to conduct discussions with responding sources about their bids; and
- 19 4. There is reasonable expectation of receiving more than one bid.

20 B. Procedure. The following general procedures shall be followed for awarding contracts by

21 competitive sealed bidding:

- 22 1. Invitation for Bids. An invitation for bids shall be issued, which shall include specifications
- 23 and all contractual terms and conditions applicable to the procurement.
- 24 2. Public Notice. Public notice of the invitation for bids shall be given at a reasonable time
- 25 prior to the date set forth therein for the opening of bids. Such notice may include publication
- 26 in a newspaper of general circulation.
- 27 3. Opening of Bids. Bids shall be opened publicly in the presence of one or more witnesses
- 28 at the time and place designated in the invitation for bids. The amount of each bid and such
- 29 other relevant information as may be specified by regulation, together with the name of each
- 30 bidder, shall be recorded; the record and each bid shall be open to public inspection.
- 31 4. Acceptance and Evaluation of Bids. Bids shall be evaluated based on the requirements set
- 32 forth in the invitation for bids. Those criteria that will affect the bid price and be considered
- 33 in evaluation for award shall be objectively measurable, such as, but not limited to, discounts,
- 34 transportation costs and total or life cycle costs. The invitation for bids shall set forth the
- 35 evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth
- 36 in the invitation for bid.

1 5. Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently erroneous
2 bids before or after award or cancellation of awards or contracts based on bid mistakes shall
3 be permitted in accordance with such regulations as the City Manager may establish. After the
4 opening of bids, no changes in bid prices or other provisions of bids prejudicial to the interest
5 of the City or fair competition shall be permitted. Except as otherwise provided by regulation,
6 all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts
7 based on bid mistakes shall be supported by a written determination by the City Manager.

8 6. Award. The contract shall be awarded with reasonable promptness by written notice to
9 the most responsible and responsive bidder whose bid meets the requirements and criteria set
10 forth in the invitation for bids.

11 7. Multistep Sealed Bidding. When it is considered impractical to initially prepare a purchase
12 description to support an award based on price, an invitation for bids may be issued requesting
13 the submission of unpriced offers to be followed by an invitation for bids limited to those
14 bidders or offerors whose offers have been qualified under the criteria set forth in the first
15 solicitation.

16 C. Cancellation of Invitation for Bids. An invitation for bids or other solicitations may be
17 canceled or any or all bids may be rejected, in whole or in part, as may be specified in the
18 solicitation when it is in the best interests of the City. (Ord. 2021-36, 2021/prior code 9A-11)

19 **7.08.060 Competitive sealed proposals.**

20 A. Conditions for Use. A contract may be entered into by the use of competitive sealed proposal
21 method:

22 1. When the City Manager determines, in writing, that due to stated circumstances, the use
23 of competitive sealed bidding is either not practical or not advantageous to the City;

24 2. For the procurement of professional services; or

25 3. Procurements exempt from competitive bidding requirements pursuant to Section
26 7.08.070.

27 B. Request for Proposals. Proposals shall be solicited through a request for proposals.

28 C. Public Notice. Adequate public notice of the request for proposals shall be given in the same
29 manner as provided in Section 7.08.050(B)(2).

30 D. Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity
31 of any offeror or the contents of any proposal to competing offerors during the evaluation process.
32 A register of proposals shall be prepared containing the name of each offeror, the number of
33 modifications received, if any, and a description sufficient to identify the item offered. The register
34 of proposals shall be open to public inspection only after contract award.

35 E. Evaluation Factors. The request for proposals shall state the relative importance of price and
36 other evaluation factors.

37 F. Discussion with Responsible Offeror and Revisions to Proposals. As provided in the request
38 for proposals, discussions may be conducted with responsible offerors who submit proposals

1 determined to be reasonably susceptible to being selected for award for the purpose of clarification
2 to assure full understanding of and conformance with the solicitation requirements. Offerors shall
3 be accorded fair and equal treatment with respect to any opportunity for discussion and revision
4 of proposal, and such revisions may be permitted after submissions and prior to award for the
5 purpose of obtaining best and final offers. In conducting discussions, there shall be no discussion
6 of the identity of competing offerors.

7 G. Award. Award shall be made to the responsible offeror whose proposal is determined to be
8 the most advantageous to the City, taking into consideration price and evaluation factors set forth
9 in the request for proposals. The contract file shall contain the basis on which the award is made.

10 H. Cancellation of Request for Proposals. A request for proposals or other solicitations may be
11 canceled or any or all proposals may be rejected, in whole or in part, as may be specified in the
12 solicitation when it is in the best interests of the City. (Ord. 2021-36, 2021/prior code 9A-12)

13 **Article 3. Other Procurement Methods**

14 **7.08.070 Procurements exempt from competitive bidding.**

15 A. Purchases Under \$30,000.00. Any procurement of goods not exceeding the amount of
16 \$30,000.00 may be made without the requirement of competitive bidding; provided, however, that
17 procurement requirements shall not be artificially divided so as to constitute a small purchase
18 under this section.

19 B. Professional Services. Any procurement of or contract for professional services may be made
20 without the requirement of competitive bidding. The City Manager may, by regulations, establish
21 competitive negotiation or selection procedures for professional service contracts or classes of
22 professional service contracts.

23 C. Emergency Procurement. The City Manager may make or authorize others to make emergency
24 procurements without the requirement of competitive bidding when there exists a threat to the
25 public health, welfare or safety under emergency conditions; provided, that the City Manager shall
26 file promptly with Council a certificate showing such emergency, the necessity for such action,
27 together with an itemized account of all expenditures, that such emergency procurements shall be
28 made with such competition as is practicable under the circumstances and that the City Manager
29 shall make a written determination of the basis for the selection of the particular contractor, which
30 shall be included in the contract file. In no case shall failure to plan for provision of a City service
31 constitute an emergency under this subsection.

32 D. Sole Source Procurement. A contract for procurements not exceeding \$50,000.00 in value
33 may be awarded for a good, service or construction item without the requirement of competitive
34 bidding when, under such regulations as the City Manager may establish, the City Manager
35 determines, in writing, that there is only one available source for the good, service or construction
36 item or if a specific manufacturer's product is required to ensure compatibility with existing
37 installed equipment and so notifies the City Council. The City Manager's determination shall be
38 subject to review and approval by the City Council by resolution.

39 E. Cooperative Purchasing. The City Manager may enter into contracts or agreements for
40 cooperative purchasing, as defined in Section 7.04.040, without the requirement of competitive
41 bidding by the City; provided, that such cooperative purchasing meets all of the requirements of

1 this division and Chapter 14.04 and is consistent with their provisions in every respect and that the
2 cooperative purchasing agreement is subject to review and approval by the City Council by
3 resolution prior to any actual purchase or purchases being made thereunder.

4 F. Products or Services Immediately Available. Subject to written authorization by the City
5 Manager, when immediate action is necessary to take advantage of a sale or when the product or
6 service is immediately available from one vendor and not from lower bidders, the procurement
7 does not exceed \$50,000.00 in value, the delay would impair the City's ability to procure such
8 goods or services, and the price from the vendor who can deliver quickly is not materially higher
9 than the lower bids.

10 G. Rider Contracts. The City Manager may use rider contracts, without the requirements of
11 competitive bidding by the City, if the contract was established in a manner consistent with the
12 purposes of this title and:

13 1. The vendor provides to the City Manager, in writing, a statement extending the terms of
14 the contract to the City; and

15 2. The City Manager obtains copies of the solicitation document, scoring sheets and/or bid
16 tabulation, evidence of contract award and the underlying executed contract, or explains in
17 writing to the Mayor and City Council why the rider contract is recommended in the absence
18 of some or all of the documentation identified in this subsection.

19 The quantity and dollar value of rider contracts may be amended; however, the scope and
20 specifications of goods and services must match the underlying contract.

21 H. In addition, the following types of transactions are exempt from competitive procurement:

22 1. Purchases for water, sewer, electric, postage, or other utility services;

23 2. Sales, rentals, or purchases of land and rights-of-way;

24 3. Employment contracts and employee relocation costs;

25 4. Temporary labor agreements;

26 5. Goods purchased from a public auction sale, including an internet auction; provided, that
27 a written determination is made in advance by the City Manager that such a purchase is in the
28 best interest of the City;

29 6. Expenditures for travel, subscriptions, courses, seminars, and conventions, membership
30 dues and subscription fees;

31 7. Acquisition of works of art for public display; and

32 8. Procurement of instructional or educational services for City officials, staff, or residents, or
33 for social, cultural, or recreational programs or events offered or sponsored by the City. (Ord.
34 2021-36, 2021/prior code § 9A-13)

1 **7.08.080 Procedure for procurements exempt from competitive bidding.**

2 A. Procurements Equal to or Exceeding \$10,000.00. Insofar as it is practical, in all procurements
3 equal to or exceeding \$10,000.00 in value, with the exception of sole source procurement,
4 cooperative purchasing, products or services immediately available, and riders, proposals for
5 goods or services required shall be solicited from at least three qualified sources. In the event that
6 three qualified sources do not exist, the City Manager or their designee shall make a written
7 determination of that fact and report that determination to the City Council.

8 B. Procurements Less Than \$10,000.00. For expenditures less than \$10,000.00, a reasonable
9 effort shall be made to obtain goods or services at the lowest cost. (Ord. 2021-36, 2021/prior code
10 § 9A-14)

11 **7.08.090 Extensions.**

12 A. An extension of a contract may be awarded without competition when the City Manager finds,
13 in writing, that circumstances warrant the extension of an existing contract at the same unit price;
14 provided, that the extension occurs within 12 months of the date of the execution of the original
15 contract.

16 B. For multi-year contracts, executed in accordance with Section 7.08.025(A), an initial extension
17 under this subsection may be made for a period of one year and approved by the City Manager.
18 Any subsequent extensions must be approved by the City Council. When funds are not
19 appropriated or otherwise made available to support continuation of performance in a subsequent
20 fiscal period, the contract shall be canceled with no penalty to the City. (Ord. 2021-36, 2021/prior
21 code § 9A-15)

22 C. For multi-year contracts, executed in accordance with Section 7.08.025(B) and (C),
23 subsequent extensions must be approved by the City Council. When funds are not appropriated or
24 otherwise made available to support continuation of performance in a subsequent fiscal period, the
25 contract shall be canceled with no penalty to the City.

26 **7.08.100 Compliance with Chapter 14.04.**

27 Notwithstanding any other provision of this division, all procurement actions shall comply in every
28 respect with all the provisions of Chapter 14.04, known as the “Takoma Park Nuclear-Free Zone
29 Act.” (Ord. 2021-36, 2021/prior code § 9A-17. Formerly 7.08.110)

30 **7.08.110 Purchase orders.**

31 A. City purchases shall be memorialized by a written contract or a purchase order signed in
32 accordance with this chapter, except as specified in subsection (D) of this section. Purchase orders
33 shall be consecutively numbered from the start of each fiscal year. Purchase orders shall be signed
34 by the City Manager or their designee.

35 B. No department head shall make any purchase on behalf of or chargeable to the City except by
36 means of a purchase order signed in accordance with subsection (A) of this section; provided,
37 however, that this subsection (B) shall not apply to expenditures made in advance of a purchase in
38 emergencies as defined in and subject to the regulations that may be established by the City
39 Manager; provided, however, that in the case of emergency expenditures, a purchase order must
40 be obtained from the City Manager or designee within 72 hours of the purchase.

1 C. No person employed by the City or providing services to the City as an independent contractor
2 shall purchase or cause to be purchased through or from the City any item for their personal use.
3 Without limitation on any other legal actions or remedies available, violations of this section shall
4 be sufficient cause for dismissal, suspension or termination of employment or of any contract for
5 services, as the City Council may determine. A violation of this section shall be a Class A offense.

6 D. No department head shall order and obtain goods or services exceeding \$10,000.00 in value
7 without first securing a purchase order. (Ord. 2021-36, 2021/prior code § 9A-18. Formerly
8 7.08.120)

9 **7.08.120 Petty cash expenditures.**

10 The City Manager shall have the authority to establish procedures for petty cash expenditures.
11 Such procedures may provide for departmental petty cash levels of up to \$200.00 for expenditures
12 made by or with the approval of department heads. Such petty cash expenditures shall be made
13 after such price shopping as the department head deems appropriate or is otherwise established by
14 the City Manager. (Ord. 2021-36, 2021/prior code § 9A-19. Formerly 7.08.130)

15 **7.08.130 Purchase of recycled products.**

16 A. General Preference. The City shall purchase recycled products whenever sufficient quantities
17 are readily available and meet the City's specifications. The City shall purchase recycled products
18 that contain the highest percentage of recovered material and are produced to the greater extent
19 with post-consumer materials.

20 B. Price Preference. To the extent practicable the City shall purchase recycled products and may
21 provide for a price preference not to exceed 15%.

22 C. Purchase of Certain Specified Products and Services. Notwithstanding any other provision of
23 this division, all procurement actions shall comply with the following provisions:

24 1. All City stationery and envelopes with the City return address shall be made of recycled
25 paper.

26 2. The City newsletter shall be produced on recycled content newsprint.

27 3. When the City is using an outside printer, the City must obtain both a price quote for
28 recycled and nonrecycled paper and shall require that the job be done using recycled paper if
29 there is a price differential of 15% or less.

30 4. All copiers and laser printers purchased by the City after the effective date of the ordinance
31 codified in this chapter shall be able to use recycled paper, and all copiers shall be able to
32 perform two-sided copying as an automatic function.

33 D. Product Specifications. All departments of the City shall review and revise product
34 specifications so as to conform to the following guidelines:

35 1. Specifications shall not require the use of products made from virgin materials.

36 2. Specifications shall not exclude the use of recycled products.

1 3. A minimum percentage of recovered material content shall be incorporated into each
2 specification when it is known that there are sufficient and readily available supplies of a
3 particular recycled product.

4 E. Practicability of Procurement. In an assessment of the practicability of procurement of goods
5 containing recycled materials, the City shall consider, among other relevant factors, product
6 availability, product suitability for intended use, including whether the product meets established
7 performance standards and will not negatively impact the health and safety of employees and
8 residents, and cost.

9 F. Certification of Recycled Content. The City shall require the seller to certify in writing that
10 any recycled product sold to the City by competitive bid contract or cooperative purchase contains
11 the minimum percentage of recovered materials set forth in the City's product specification and
12 shall also specify the percentage of post-consumer materials contained in the product.

13 G. Labeling of Recycled Products. To the extent practical, all products purchased by the City
14 made from recycled materials shall be labeled as such. City stationery, envelopes with the City
15 return address and the City newsletter shall be labeled as being printed on recycled paper. (Ord.
16 2021-36, 2021/prior code § 9A-19.1. Formerly 7.08.140)

17 **7.08.140 Environmentally preferable purchasing.**

18 A. General Preferences. Environmental and energy considerations shall become part of the City's
19 normal purchasing and procurement decisions, with the goals of justifying environmental and
20 energy costs of City decisions and choosing minimal-effect options, consistent with such
21 traditional factors as safety, price, performance, and availability. The City also prefers to do
22 business with vendors and contractors that are locally owned, use and sell environmentally
23 preferable products or services, produce minimal waste, and use recycled products and
24 environmentally preferable purchasing practices, as services provided by local suppliers reduce
25 environmental impact due to transportation and keep municipal funds in the community. To the
26 greatest extent practicable, the City shall purchase environmentally and energy preferable products
27 and services that:

- 28 1. Use recycled materials.
- 29 2. Generate minimal waste in manufacturing or use.
- 30 3. Are durable, longer lasting, reusable, refillable or compostable.
- 31 4. Use minimal energy and water.
- 32 5. Involve minimal use of toxic and hazardous materials.
- 33 6. Minimize production of greenhouse gases.
- 34 7. Minimize production of environmental pollutants including ozone precursors.
- 35 8. Are locally supplied or produced.

1 B. Price Preference. To the greatest extent practicable, the City shall purchase environmentally
2 preferable and locally supplied products and services, and may provide for a price preference for
3 such products and services not to exceed 15%.

4 C. Locality Preference. The City may give preference in purchasing products and services to
5 locally supplied products, goods, and services, Montgomery County green certified businesses,
6 and State of Maryland certified small businesses.

7 D. Purchase of Certain Specified Products and Services. City procurement actions shall comply
8 with the following provisions:

9 1. Energy and Water Savings. Where applicable, energy-efficient equipment shall be
10 purchased with the most up-to-date energy efficiency functions. This includes, but is not
11 limited to, high efficiency space heating systems and high efficiency space cooling equipment.

12 2. Energy Efficiency Certifications. All products purchased by the City for which United
13 States Environmental Protection Agency (U.S. EPA) Energy Star or WaterSense certification
14 is available shall meet that certification, when practicable. When Energy Star or WaterSense
15 labels are not available, energy-efficient products that are in the upper 25% of energy
16 efficiency as designated by the Federal Energy Management Program are preferred.

17 3. Recycled Content Products. All products for which the U.S. EPA has established minimum
18 recycled content standard guidelines, such as those for printing paper, office paper, janitorial
19 paper, construction, landscaping, parks and recreation, transportation, vehicles, miscellaneous,
20 and nonpaper office products, shall contain the highest post-consumer content practicable, but
21 no less than the minimum recycled content standards established by U.S. EPA guidelines.
22 These standards are described at www.epa.gov/cpg.

23 4. Remanufactured Products. The City shall purchase remanufactured products such as laser
24 toner cartridges, tires, furniture, equipment, and automotive parts whenever practicable, but
25 without reducing safety, quality, or effectiveness.

26 5. Ozone Depleting Compounds. The use of refrigerants, solvents and other products shown
27 to deplete stratospheric ozone shall be phased out and new purchases shall not contain them.

28 6. Pollutants. All detergents shall be readily biodegradable and, where practicable, shall not
29 contain phosphates.

30 E. Product Specifications. All departments of the City shall review and revise product
31 specifications so as to conform to the following guidelines, to the extent practicable:

32 1. Specifications shall not require the use of products made from virgin materials.

33 2. Specifications shall not exclude the use of recycled or remanufactured products.

34 3. A minimum percentage of recovered material content shall be incorporated into each
35 specification when it is known that there are sufficient and readily available supplies of a
36 particular recycled product.

1 4. Cleaning or disinfecting products (i.e., for janitorial or automotive use) shall not contain
2 ingredients that are carcinogens, mutagens, or teratogens. These include chemicals listed by
3 the U.S. EPA or the National Institute for Occupational Safety and Health on the Toxics
4 Release Inventory.

5 5. Wherever practicable, products and materials shall use and meet the following federal
6 standards where applicable:

- 7 a. U.S. EPA Energy Star (energy efficient products);
- 8 b. U.S. EPA WaterSense (water efficient products);
- 9 c. U.S. EPA guidelines (various other products at www.epa.gov/cpg);
- 10 d. U.S. Green Building Council LEED standards.

11 6. At the discretion of the City Manager, industry standards for environmentally preferable
12 products, including construction, landscaping, paper, park and recreation, transportation,
13 vehicular, nonpaper office and other products should be followed. Current examples of these
14 are:

- 15 a. Responsible Purchasing Network (various products);
- 16 b. EcoLogo (various products), Green Seal (various products);
- 17 c. Greenguard Environmental Institute (various products);
- 18 d. CFPA (chlorine free paper);
- 19 e. EPEAT (electronics);
- 20 f. Forest Stewardship Council (paper products);
- 21 g. Resilient Floor Covering Institute (flooring products);
- 22 h. Carpet and Rug Institute (carpets).

23 F. Practicability of Procurement. In an assessment of the practicability of the procurement or
24 purchase of specific environmentally preferable or locally available products, the City shall
25 consider, among other relevant factors, product availability, product longevity, and product
26 suitability for its intended use, including whether the product meets established performance
27 standards, any adverse impact of the product on the health and safety of employees and residents,
28 and cost. Nothing contained in this section shall require a City department, purchaser, or contractor
29 to procure or purchase products that do not perform adequately for their intended use, exclude
30 adequate competition, or cost more than 15% above the standard cost for the product. (Ord. 2021-
31 36, 2021/Ord. 2014-41 § 1, 2014. Formerly 7.08.150)

1 **Article 4. Living Wage Requirement**

2 **7.08.150 Scope.**

3 Every City contract for the provision of services, awarded after a competitive bid or proposal
4 process, shall require the contractor and any subcontractor to pay each employee assigned to
5 perform services under the City contract a living wage. As used in this article, “covered employer”
6 refers to any contractor or subcontractor who is subject to the City’s living wage requirement.
7 (Ord. 2021-36, 2021/Ord. 2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007. Formerly 7.08.180)

8 **7.08.160 Exemptions.**

9 The provisions of this article do not apply to the following:

- 10 A. A contract for services valued at less than \$20,000.00.
- 11 B. A contract:
- 12 1. With a public entity.
- 13 2. With a nonprofit organization that has qualified for an exemption from Federal income
14 taxes under Section 501(c)(3) of the Internal Revenue Code.
- 15 3. Procured through an emergency procurement, sole source procurement, or cooperative
16 purchase procurement.
- 17 4. For electricity, telephone, cable television, water, sewer, or similar service delivered by a
18 regulated public utility.
- 19 5. For the purchase or lease of goods, equipment or vehicles.
- 20 C. If the City Manager makes a written determination that application of this article would
21 conflict with an applicable Federal, State or County program, contract, or grant requirement, then
22 the living wage requirements of this article shall not apply to the contract or program. (Ord. 2021-
23 36, 2021/Ord. 2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007. Formerly 7.08.190)

24 **7.08.170 Solicitation requirements.**

- 25 A. The City’s living wage requirement shall be identified and set forth in all nonexempt
26 procurement solicitations for the contract.
- 27 B. Each response to a bid or proposal to provide services to the City and each City contract for
28 services must include a certification that the contractor and each subcontractor shall comply with
29 the City’s living wage requirements or a certification by the contractor or subcontractor setting
30 forth the applicable exemption from the living wage requirement, along with supporting
31 documentation for the exemption. Any contractor or subcontractor who knowingly makes a false
32 statement in such certification, or who fails to comply with the living wage requirement during
33 performance of a City contract for services, shall be subject to loss of the contract and
34 disqualification from future City contracts.
- 35 C. A contractor must not split or subdivide a contract, pay an employee through a third party, or
36 treat an employee as a subcontractor or independent contractor, to avoid the imposition of any
37 requirement under this article.

1 D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to
2 any employee who provides services to the City under a City contract, the contractor or
3 subcontractor may:

4 1. Certify in its bid or proposal the per-employee hourly cost of the employer's share of the
5 premium for that insurance; and

6 2. Reduce the wage paid under Section 7.08.180 to any employee covered by the health
7 insurance by all or part of the per-employee hourly cost of the employer's share of the health
8 insurance premium. (Ord. 2021-36, 2021/Ord. 2007-55 § 1 (part), 2007. Formerly 7.08.200)

9 **7.08.180 Living wage requirement.**

10 A. Except as permitted under Section 7.08.170(D), each covered employer must pay each
11 employee who is not exempt under subsection (F) of this section no less than the City's living
12 wage rate.

13 B. The City's living wage rate shall be equal to the Montgomery County living wage rate
14 established and published by Montgomery County pursuant to Section 11B-33A of the
15 Montgomery County Code and any applicable regulations, as amended and in effect from time to
16 time.

17 C. The City's living wage rate shall be adjusted as of July 1st of each year to reflect the most
18 current Montgomery County living wage rate and shall be applicable to any contract awarded
19 thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at
20 the time a contract is awarded to a covered employer by the City shall remain in effect under such
21 contract during its original term. At the time of the exercise of any renewal option under a City
22 contract with a covered employer, the required wage rate shall be adjusted as provided above, and
23 as adjusted, shall remain in effect during the renewal term.

24 D. The City Manager shall establish the applicable living wage rate by April 1st of each year and
25 cause such rate to be published in English and Spanish on the City's website. Notice of the required
26 living wage rate also shall be stated in procurement solicitations, as required by Section
27 7.08.170(A).

28 E. Each covered employer must include the living wage requirements of this article in every
29 subcontract so that the provisions of this article will be binding upon each subcontractor.

30 F. The living wage requirements of this section do not apply to any employee:

31 1. Who performs no measurable work related to any contract with the City;

32 2. Who participates in a government-operated or government-sponsored program that
33 restricts the earnings of or wages paid to employees to a level below the wage required under
34 this section;

35 3. Who participates for no longer than 120 days in any calendar year in a government-
36 operated or government-sponsored summer youth employment program; or

37 4. For whom a lower wage rate is expressly set in a bona fide collective bargaining
38 agreement.

1 G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law or
2 regulation controls. If any applicable collective bargaining agreement requires payment of a higher
3 wage, that agreement controls. (Ord. 2021-36, 2021/Ord. 2007-55 § 1 (part), 2007. Formerly
4 7.08.210)

5 **7.08.190 Notices.**

6 A. Each covered employer shall conspicuously post notice of the required City living wage rate,
7 in English and Spanish, on such form as shall be provided by the City.

8 B. Within three days of an employee's request, a covered employer shall provide to such
9 employee a written statement in English and Spanish, on such form as shall be provided by the
10 City, of the then-required living wage rate. (Ord. 2021-36, 2021/Ord. 2007-55 § 1 (part), 2007.
11 Formerly 7.08.220)

12 **7.08.200 Enforcement.**

13 A. During the term of the City contract and for a period of three years after the expiration or
14 earlier termination of the City contract, each contractor and subcontractor subject to the provisions
15 of this article shall keep and preserve records which show the wages provided by such contractor
16 and its subcontractors to each employee who provided services under the City contract. The City
17 Manager, or designee, shall have the power to examine such records at reasonable times during
18 normal business hours for the purpose of administering and enforcing the provisions of this article,
19 and to make copies of all or any parts thereof.

20 B. As an additional term of the City contract, no covered employer shall discharge, reduce the
21 compensation of, or otherwise retaliate against an employee for asserting any right under this
22 article, filing a complaint of violation, or taking any other action to enforce the requirements of
23 this article. Any retaliation is subject to all sanctions for noncompliance with this article.

24 C. City contracts may specify that liquidated damages for any noncompliance with this article
25 include the amount of any unpaid wages, with interest at the judgment rate from the date originally
26 due and less any deductions required or permitted by law, and that the contractor is jointly and
27 severally liable for any noncompliance by a subcontractor.

28 D. Any contractor or subcontractor which fails to pay an employee the living wage required by
29 this article shall be liable to the employee in the amount of the unpaid wages, plus interest at the
30 judgment rate from the date originally due and less any deductions required or permitted by law,
31 reasonable attorney's fees, and damages for any retaliation for asserting any right under this article.
32 Any aggrieved employee of a covered employer under a City contract shall be deemed a third-
33 party beneficiary of the City contract and of the provisions mandated by this article in the City
34 contract. (Ord. 2021-36, 2021/Ord. 2007-55 § 1 (part), 2007. Formerly 7.08.230)

35 **7.08.210 Review of living wage requirement.**

36 The City Council shall review the living wage requirement, including the exemptions set forth in
37 Section 7.08.160, every three years following the effective date of this article. Subsequent to such
38 review, the City Council shall determine whether to continue or modify the City's living wage
39 requirement. The Council's failure to conduct such review shall have no effect on the validity of
40 the living wage requirement set forth in this article. (Ord. 2021-36, 2021/Ord. 2007-55 § 1 (part),
41 2007. Formerly 7.08.240)

1 **Article 5. Bonds and Bid Security**

2 **7.08.220 Bid security.**

3 A. Requirement for Bid Security.

4 1. Bid security shall be required for all construction contracts where performance security is
5 required.

6 2. At the discretion of the City Manager, bid security may be required for other contracts.

7 3. Where bid security is required, a successful bidder shall forfeit such security upon failure
8 to enter into a contract within the time specified in the invitation for bids or contract award.

9 B. Form of Security. Bid security shall be in the form of a bond provided by a surety company
10 authorized to do business in this State, or the equivalent in cash, letter of credit, or in such other
11 form satisfactory to the City.

12 C. Amount of Bid Security. Bid security for a construction contract shall be in an amount equal
13 to at least 5% of the amount of the bid. Bid security for other than a construction contract shall be
14 in such amount as is determined by the City Manager to sufficiently guarantee that the bidder to
15 whom the contract is awarded will enter into the contract for the work described in the bid.

16 D. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation
17 for bids requires security, noncompliance requires that the bid be rejected, unless it is determined
18 in writing that such noncompliance is insubstantial.

19 E. Withdrawal of Bids. If a bidder is permitted to withdraw a bid before award, or is excluded
20 from the competition prior to award, no action shall be taken against the bidder or the bid security.
21 (Ord. 2021-36, 2021)

22 **7.08.230 Contract performance and payment bonds.**

23 A. When Required and Amounts. When a construction contract is awarded, the following bonds
24 or other security, in a form satisfactory to the City, shall be delivered to the City and shall become
25 binding on the parties upon the execution of the contract:

26 1. A performance bond payable to the City, executed by a surety company authorized to do
27 business in the State, or the equivalent in cash or other security, conditioned upon the faithful
28 performance of the contract, including all warranties and guarantees. The bond or other
29 security shall be in an amount equal to 100% of the price specified in the contract; and

30 2. A payment bond, executed by a surety company authorized to do business in the State, or
31 the equivalent in cash, letter of credit, or other security deemed satisfactory to the City, for the
32 protection of all persons supplying labor and materials, including lessors of equipment to the
33 extent of the fair rental value thereof, to the contractor or its subcontractors for the performance
34 of the work provided for in the contract.

35 a. For a contract exceeding \$100,000.00 the bond or other security shall be in an amount
36 equal to 100% of the price specified in the contract.

1 b. For a contract exceeding \$25,000.00 but not exceeding \$100,000.00, the bond or other
2 security shall be in an amount equal to 50% of the price specified in the contract.

3 c. No payment bond is required for a contract not exceeding \$25,000.00, unless a written
4 determination is made that a payment bond is appropriate under the circumstances. Such
5 a bond shall be in an amount not to exceed 50% of the contract price.

6 B. Certification of Payments. Any contractor, prior to receiving a progress or final payment
7 under a contract covered hereunder, shall certify in writing that such contractor has made payment
8 from the proceeds of prior payments, and that such contractor will make timely payments from the
9 proceeds of the progress or final payment then due such contractor, to such contractor's
10 subcontractors and suppliers in accordance with such contractor's contractual arrangement with
11 them.

12 C. Waiver or Reduction of Requirement for Bonds. The City Manager may waive or reduce, in
13 writing, the requirement for performance bonds for construction contracts under \$25,000.00.

14 D. Maintenance Bond. Contract specifications may require security in an amount determined by
15 the City Manager to adequately cover reasonable maintenance, repair, or replacement costs during
16 the contract warranty or guarantee period. (Ord. 2021-36, 2021)

17 **7.08.240 Additional bonds.**

18 Nothing in this article shall be construed to limit the authority of the City to require any additional
19 bonds or other security in addition to, or in cases other than those specified in, this article. (Ord.
20 2021-36, 2021)

21 **Article 6. Disposition of Goods**

22 **7.08.250 Generally.**

23 A. All departments, at such times and in such form as may be prescribed, shall submit to the City
24 Manager reports listing stocks of all articles which are no longer used, which have become obsolete
25 or which are surplus to the needs of the department. The City Manager shall transfer serviceable
26 surplus goods between using departments in lieu of filling requisitions for the purchase of new or
27 additional stock of the same or similar articles, unless such transfer is contrary to the best interests
28 of the City as determined by the City Manager.

29 B. The City Manager shall provide a report on disposed equipment/goods to the Council on a
30 quarterly basis. (Ord. 2021-36, 2021/prior code § 9A-20. Formerly 7.08.150)

31 **7.08.260 Methods of sale.**

32 A. Except as provided in this article, all goods which have become surplus, obsolete or unusable
33 and whose current estimated value is \$10,000.00 or more shall be sold to the highest responsible
34 bidder by the competitive bid or proposal procedures prescribed in Article 2 of this chapter, except
35 that the goal shall be to obtain the highest price from prospective purchasers. The City Manager
36 may waive the competitive bid or proposal procedures and sell such property by auction or by
37 private sale after reasonable public notice when the return to the City is expected to be increased
38 or the nature of the goods is such as to make competitive bid or proposal procedures impractical.

1 B. Goods which have been found by the City Manager to have become surplus, obsolete or
2 unusable, and whose current value is estimated to be less than \$10,000.00, may be disposed of by
3 the methods described in regulations the City Manager may establish. Such dispositions shall,
4 wherever feasible, be based on competitive price quotations and shall be made to a responsible
5 purchaser offering the highest price. The City Manager is authorized to sell by auction such
6 property to the highest responsible bidder, after public notice, when, in the City Manager's
7 opinion, the return to the City is expected to increase by this procedure. In order to produce the
8 highest return for the disposition of such personal property, the City Manager may select from the
9 following disposition methods the method which will yield the greatest return under the
10 circumstances of each disposition:

- 11 1. Competitive sealed bids;
- 12 2. Competitive sealed proposals;
- 13 3. Competitive auction sale;
- 14 4. Trade-in or exchange for goods which are of current need;
- 15 5. Competitive negotiation. (Ord. 2021-36, 2021/prior code § 9A-21. Formerly 7.08.160)

16 **7.08.270 Worthless items.**

17 In the event that the City Manager or their designee determines that the goods offered for disposal
18 have no real or scrap value, they may be disposed of as refuse. (Ord. 2021-36, 2021/prior code §
19 9A-22. Formerly 7.08.170)

2 ETHICS IN CONTRACTING

3 Sections:

4 7.12.010 Collusive bidding.

5 7.12.020 Authority to disqualify or suspend contractors.

6 7.12.030 Ethics of City officers and employees—Violations of competitive bidding regulations
7 declared misdemeanor.

8 **7.12.010 Collusive bidding.**

9 A. Notification. When collusion is suspected among any bidders or offerors, the City
10 Administrator shall transmit a written notice of such suspicion to Corporation Counsel.

11 B. Retention of Documents. All documents involved in any procurement in which collusion is
12 suspected shall be made available to Corporation Counsel upon request. All documents shall be
13 retained until Corporation Counsel approves their destruction.

14 C. Amount of Liability for Damages. A person who enters into a contract with the City after
15 engaging in collusion with another person for the purpose of defrauding the City shall be liable for
16 damages equal to 3 times the value of the loss to the City which is attributable to the collusion.
17 (Prior code § 9A-23)

18 **7.12.020 Authority to disqualify or suspend contractors.**

19 A. After reasonable notice to the person involved and reasonable opportunity for that person to
20 be heard, the City Administrator, after consulting with Corporation Counsel, is authorized to
21 disqualify a person for cause from consideration for award of contracts. The disqualification shall
22 be for a period of not more than 3 years. After consultation with Corporation Counsel, the City
23 Administrator is authorized to suspend a person from consideration for award of contracts if there
24 is probable cause to believe that the person has engaged in any activity which might lead to
25 disqualification. The suspension shall be for a period not exceeding 3 months.

26 B. The causes for disqualification include:

27 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting
28 to obtain a public or private contract or subcontract, or in the performance of such contract or
29 subcontract;

30 2. Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery,
31 falsification or destruction of records, receiving stolen property or any other offense indicating
32 a lack of business integrity or business honesty which currently, seriously and directly affects
33 responsibility as a City contractor;

34 3. Conviction under State or Federal antitrust statutes arising out of submission of bids or
35 proposals;

1 4. Violation of contract provisions, as set forth below, of a character which is regarded to be
2 so serious as to justify disqualification action:

3 a. Deliberate failure without good cause to perform in accordance with the specifications
4 or within the time limit provided in the contract;

5 b. A recent record of failure to perform or of unsatisfactory performance in accordance
6 with the terms of one or more contracts, provided that failure to perform or unsatisfactory
7 performance caused by acts beyond the control of the contractor shall not be considered
8 to be a basis for debarment;

9 5. Any other cause determined to be so serious and compelling as to affect responsibility as
10 a City contractor, including disqualification by another governmental entity for any cause
11 listed in this division.

12 6. Violation of Chapter 3.04, Ethics. (Prior code § 9A-24)

13 **7.12.030 Ethics of City officers and employees—Violations of competitive bidding**
14 **regulations declared misdemeanor.**

15 A. The provisions of Chapter 3.04, Ethics, shall be applicable to this chapter.

16 B. In addition to the provisions of Chapter 3.04, no contract shall be let or awarded in which any
17 official or employee of the City is financially interested and through which the official or employee
18 may individually profit financially, nor shall any official or employee of the City, in any capacity
19 whatsoever, represent any person where such representation involves an appearance before the
20 City Council or before any department of the City. Any contract in violation of the provisions of
21 this subsection shall be void, and any person responsible for the making of a contract in willful
22 violation of the provisions of this subsection shall be guilty of a misdemeanor. (Prior code § 9A-
23 25)

24
25 THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
26 MARYLAND, THIS ____ DAY O July, 2024, BY ROLL-CALL VOTE AS FOLLOWS:

27
28 AYE:

29 NAY:

30 ABSTAIN:

31 ABSENT:

32
33
34 **Explanatory Note:**

35
36 1. Underlining indicates language being added to the Code.

37 2. ~~Strikethrough~~ indicates language being deleted from the Code.